

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN ASSEMBLY MAY 22, 2000

AMENDED IN ASSEMBLY MAY 10, 2000

AMENDED IN SENATE JANUARY 18, 2000

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 15, 1999

AMENDED IN SENATE MARCH 25, 1999

AMENDED IN SENATE FEBRUARY 25, 1999

SENATE BILL

No. 126

Introduced by Senator Polanco

December 22, 1998

An act to add Section ~~208.7~~ 1713.5 to the Welfare and Institutions Code, relating to juvenile offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as amended, Polanco. State Incarcerated Youth Ombudsperson.

Existing law *requires all powers, duties, and functions pertaining to the care and treatment of wards provided by law, and not specifically assigned to the Youthful Offender Parole Board, to be exercised by the Director of the Youth Authority.* Existing law also directs the Board of Corrections to conduct biennial inspections of each jail, juvenile hall,

lockup, or special purpose juvenile hall that was used to confine a minor during the preceding calendar year.

~~This bill would create the Office of the State Incarcerated Youth Ombudsperson to provide assistance to persons who are at least 10 years of age, but not more than 21 years of age, who are within the jurisdiction of the juvenile court on the basis of criminal conduct, and who are detained in or confined to juvenile halls and camps, facilities operated by the Department of the Youth Authority, or private facilities licensed to house more than 12 minors, in resolving issues related to their placement, care, or services.~~

~~The bill would provide that the Governor shall appoint the ombudsperson to a 4 year term. The bill would direct the ombudsperson to investigate incidents involving persons who are eligible to receive assistance from the ombudsperson. Among other things, the bill would require the ombudsperson to compile and make available to the Legislature specified data collected relating to these duties. The bill would authorize the ombudsperson to examine records and documents of any juvenile hall or camp, a facility operated by the Department of the Youth Authority, or any private facility licensed to house more than 12 minors, that is used for the detention or incarceration of persons who are eligible to receive assistance from the ombudsperson. The ombudsperson would also have access to any record of a state or local agency that is necessary to carry out his or her duties.~~

~~The bill would provide that a court shall issue an order requiring compliance with a request of the ombudsperson, as specified, to any person who willfully obstructs or hinders the ombudsperson in the proper and lawful exercise of his or her duties, or who willfully misleads or attempts to mislead the ombudsperson in his or her inquiries or investigation.~~

~~The bill would also provide that the ombudsperson and his or her staff would have the same immunity from civil and criminal liability as a judge.~~

~~The Department of the Youth Authority, a county probation department, or a county welfare department, as applicable, would be required to respond to the ombudsperson regarding action taken on recommendations~~



~~of the ombudsperson or the reasons for not taking that action, thus establishing a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions require the Director of the Youth Authority to employ ombudspersons, with specified authority, to provide assistance to wards and staff of facilities of the Department of the Youth Authority. Among the duties of the ombudspersons would be the dissemination of information, the investigation of complaints, and notification of the outcome of complaints. The bill would provide that a ward or staff member who meets or communicates with an ombudsperson shall not be subject to any penalties or restrictions because of that meeting or communication. This bill would also require the Board of Corrections to report to the Legislature on the feasibility of establishing an ombudsperson program under the board to serve juveniles held in local juvenile halls, camps, and ranches.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section ~~208.7~~ 1713.5 is added to the
- 2 Welfare and Institutions Code, to read:
- 3 ~~208.7.~~ (a) (1) ~~There is hereby created the Office of~~
- 4 1713.5. (a) *The Director of the Youth Authority shall*
- 5 *employ ombudspersons to provide assistance to wards*
- 6 *and staff of facilities operated by the Department of the*
- 7 *Youth Authority.*
- 8 (b) *The ombudspersons shall be persons of recognized*
- 9 *judgment, objectivity, and integrity, who are qualified by*

1 training and experience to analyze problems of
2 corrections administration and public policy.

3 (c) The ombudsperson shall do the following:

4 (1) Disseminate information regarding the rights of
5 wards.

6 (2) Investigate complaints related to the care,
7 placement, and services for wards and attempt to resolve
8 those complaints informally.

9 (3) Insure that complaints regarding any action by the
10 department that is contrary to law or to the department's
11 policies and procedures are investigated.

12 (4) Report to the director on the nature of complaints
13 received, their sources, and the outcome of any
14 investigations.

15 (5) Notify the person making the complaint the final
16 outcome of the complaint or the reason the complaint has
17 not been investigated. This paragraph shall not be
18 construed to allow the disclosure of confidential
19 information as specified in Sections 832.7 and 832.8 of the
20 Penal Code.

21 (6) Refer criminal complaints to the department's
22 internal affairs unit or the local law enforcement agency.

23 (d) The ombudspersons shall have authority to do any
24 of the following:

25 (1) Enter and inspect any Youth Authority facility.

26 (2) Meet or communicate with any ward or staff
27 member who requests a meeting with an ombudsperson.

28 (3) Correspond confidentially with any ward or staff
29 member.

30 (e) No ward or staff member who meets or
31 communicates with an ombudsperson shall be subject to
32 any penalties, sanctions, or restrictions because of that
33 meeting or communications.

34 SEC. 2. The Board of Corrections shall report to the
35 Legislature by May 1, 2001, on the feasibility of
36 establishing an ombudsperson program under the
37 administration of the board to serve juveniles held in local
38 justice halls, camps, and ranches. The report shall include,
39 but not be limited to, recommendations for the program,
40 including staffing, costs, procedures, and goals.

~~the State Incarcerated Youth Ombudsperson.~~

~~(2) The Governor shall appoint the State Incarcerated Youth Ombudsperson. The appointment shall be for a term of four years. The Governor shall make his or her decision in consultation with a committee comprised of at least seven but not more than 10 persons, including at least one representative each of county probation officers, the Department of the Youth Authority, the Board of Corrections, juvenile court judges, and youth advocacy organizations. The Director of the Youth Authority shall select the committee members, the majority of whom shall be representatives of youth advocacy organizations.~~

~~(3) The position of State Incarcerated Youth Ombudsperson shall be a full time position and the person appointed to that position shall not be employed in any other capacity. The ombudsperson shall be a person of recognized judgment, objectivity, and integrity who is qualified by training and experience to analyze problems of law enforcement, corrections administration, and public policy. The ombudsperson shall not do any of the following:~~

~~(A) Be actively involved in political party activities.~~

~~(B) Be a candidate for or hold other public office, whether elective or appointive.~~

~~(C) Be engaged in any other full-time occupation, business, or profession.~~

~~(b) The Office of the State Incarcerated Youth Ombudsperson shall provide assistance to persons who are at least 10 years of age but not more than 21 years of age, who are within the jurisdiction of the juvenile court pursuant to Section 602, and who are detained in or committed to a juvenile hall or camp, a facility operated by the Department of the Youth Authority, or a private facility licensed to house more than 12 minors. The Office of the State Incarcerated Youth Ombudsperson shall do all of the following:~~

~~(1) Disseminate information regarding the rights of persons to whom the ombudsperson is authorized to~~

~~1 provide assistance pursuant to this section and regarding
2 the types of assistance available.~~

~~3 (2) Investigate and attempt to resolve complaints
4 related to care, placement, or services made by or on
5 behalf of persons eligible to receive assistance from the
6 ombudsperson. The office shall investigate, upon
7 complaint or upon his or her own initiative, any incident
8 involving a person eligible to receive assistance from the
9 ombudsperson that occurred in a juvenile hall or camp,
10 in a facility operated by the Department of the Youth
11 Authority, or in a private facility licensed to house more
12 than 12 minors if the incident comes within any of the
13 following descriptions:~~

~~14 (A) Is contrary or inconsistent with law or
15 Department of the Youth Authority practice.~~

~~16 (B) Is inadequately explained when reasons should
17 have been revealed.~~

~~18 (C) Is inefficiently performed.~~

~~19 (D) Is unreasonable, unfair, or otherwise
20 objectionable, even though in accordance with law.~~

~~21 (3) Determine whether to investigate a complaint or
22 refer complaints to another agency for investigation. The
23 ombudsperson may decide not to investigate a complaint
24 or incident under either of the following conditions:~~

~~25 (A) The complaint is trivial, frivolous, vexatious, or
26 was not made in good faith.~~

~~27 (B) The complaint has been too long delayed to justify
28 present examination.~~

~~29 (4) If the office decides to investigate a complaint,
30 then it shall (A) notify the complainant of the intention
31 to investigate, (B) update the complainant on the
32 progress of the investigation, and (C) notify the
33 complainant of the final outcome. If the office declines to
34 investigate a complaint or continue an investigation, the
35 office shall notify the complainant of the reasons for
36 declining to investigate.~~

~~37 (5) Document the number, source, location, and
38 nature of the complaints submitted to the office.~~

~~39 (6) Compile and make available to the Legislature all
40 data collected over the course of the year, including, but~~

1 ~~not limited to, the number of calls to the toll-free~~
2 ~~telephone number, the number of complaints made, the~~
3 ~~number of investigations performed by the office, the~~
4 ~~number of referrals made, and the number of unresolved~~
5 ~~complaints.~~

6 ~~(7) Collaborate with local ombudspersons.~~

7 ~~(e) The ombudsperson shall have the power to do all~~
8 ~~of the following:~~

9 ~~(1) Hire the necessary personnel to perform the~~
10 ~~functions of the office, and establish and administer a~~
11 ~~budget for the office.~~

12 ~~(2) Investigate, upon complaint or upon his or her own~~
13 ~~initiative, any incident involving a person who is eligible~~
14 ~~to receive services provided by the ombudsperson that~~
15 ~~occurred in a juvenile hall or camp, at a facility operated~~
16 ~~by the Department of the Youth Authority, or in a private~~
17 ~~facility licensed to house more than 12 minors that is used~~
18 ~~for the detention or confinement of any person who is~~
19 ~~eligible to receive assistance from the ombudsperson.~~

20 ~~(3) Adopt rules necessary for the discharge of the~~
21 ~~duties of the office, including procedures for receiving~~
22 ~~and processing complaints, conducting investigations,~~
23 ~~and reporting findings.~~

24 ~~(4) Examine records and documents of any juvenile~~
25 ~~hall or camp, a facility operated by the Department of the~~
26 ~~Youth Authority, or any private facility licensed to house~~
27 ~~more than 12 minors that is used for the detention or~~
28 ~~confinement of a person who is eligible to receive~~
29 ~~assistance from the ombudsperson.~~

30 ~~(5) Enter and inspect without notice any juvenile hall~~
31 ~~or camp, the Youth Authority, or any private facility~~
32 ~~licensed to house more than 12 minors used for the~~
33 ~~detention or confinement of a person who is eligible to~~
34 ~~receive assistance from the ombudsperson.~~

35 ~~(6) Notwithstanding Section 827, subpoena any person~~
36 ~~to appear, to give sworn testimony, or to produce~~
37 ~~documentary or other evidence that is reasonably~~
38 ~~material to an inquiry authorized pursuant to this section.~~

39 ~~(7) Undertake, participate in, or cooperate with~~
40 ~~persons and agencies in conferences, inquiries, meetings,~~

~~1 or studies that may lead to improvements in the
2 functioning of the juvenile halls and camps, facilities
3 operated by the Department of the Youth Authority, and
4 private facilities licensed to house more than 12 minors
5 that are used for the detention or confinement of a person
6 who is eligible to receive assistance from the
7 ombudsperson.~~

~~8 (8) Conduct any investigation he or she deems
9 necessary.~~

~~10 (9) Attempt to resolve complaints informally.~~

~~11 (10) Submit a written plan to the relevant state or
12 county agency recommending a course of action to
13 resolve the complaint. If the ombudsperson makes a
14 written recommendation, the state or county agency
15 shall submit a written response to the ombudsperson
16 within 30 business days.~~

~~17 (11) Request the Legislature to take any necessary
18 legislative action reasonably related to the performance
19 of his or her duties.~~

~~20 (d) Notwithstanding any other provision of state law,
21 to the extent consistent with federal law, the
22 ombudsperson shall have access to any record of a state
23 or local agency that is necessary to carry out his or her
24 responsibilities, and may meet or communicate with any
25 person who is detained or confined in a juvenile hall or
26 camp, a facility operated by the Department of the Youth
27 Authority, or private facility licensed to house more than
28 12 minors if that person is eligible to receive assistance
29 from the ombudsperson.~~

~~30 (e) The ombudsperson shall treat confidentially all
31 matters and the identities of the complainants and
32 witnesses. The ombudsperson shall not levy any fees for
33 the submission or investigation of complaints.~~

~~34 (f) A toll-free telephone number shall be established
35 for the office. The toll-free telephone number shall be
36 posted next to each telephone that is located in a juvenile
37 hall or camp, a facility operated by the Department of the
38 Youth Authority, or a private facility licensed to house
39 more than 12 minors, and that is authorized for use by~~

1 ~~persons who are eligible to receive assistance from the~~
2 ~~ombudsperson.~~

3 ~~(g) After investigation of any action, the~~
4 ~~ombudsperson shall state the recommendations and~~
5 ~~reasons if, in the ombudsperson's opinion, the~~
6 ~~Department of the Youth Authority, a county probation~~
7 ~~department, or a county welfare department, as~~
8 ~~applicable, should:~~

9 ~~(1) Consider the matter further.~~

10 ~~(2) Modify or cancel any action.~~

11 ~~(3) Alter a rule, practice, or ruling.~~

12 ~~(4) Take any other action.~~

13 ~~Upon request of the ombudsperson, the Department of~~
14 ~~the Youth Authority, or a county probation department,~~
15 ~~or the county welfare department, as applicable, shall,~~
16 ~~within the time period specified by the ombudsperson,~~
17 ~~inform the ombudsperson about the action taken on the~~
18 ~~recommendations or the reasons for not complying with~~
19 ~~them. The ombudsperson may issue a report concerning~~
20 ~~the compliance or noncompliance of the department, the~~
21 ~~county probation department, or the county welfare~~
22 ~~department, as applicable, with his or her~~
23 ~~recommendations.~~

24 ~~(h) The ombudsperson and the staff of the office shall~~
25 ~~have the same immunity from civil and criminal liability~~
26 ~~as a judge of this state.~~

27 ~~(i) If any person willfully obstructs or hinders the~~
28 ~~ombudsperson in the proper and lawful exercise of his or~~
29 ~~her duties, or willfully misleads or attempts to mislead the~~
30 ~~ombudsperson in his or her inquiries or investigation, the~~
31 ~~court, on application of the ombudsperson, shall issue an~~
32 ~~order mandating compliance with a request made by the~~
33 ~~ombudsperson that is necessary and proper to carry out~~
34 ~~his or her duties.~~

35 ~~(j) No person who files a complaint with the~~
36 ~~ombudsperson shall be subject to any penalties, sanctions~~
37 ~~or restrictions because of that complaint.~~

38 ~~(k) A letter to the ombudsperson from a person who~~
39 ~~is eligible for services provided by the ombudsperson who~~
40 ~~is detained or confined shall be forwarded immediately,~~

1 ~~unopened, to the ombudsperson. A letter from the~~
2 ~~ombudsperson to a person who is eligible to receive~~
3 ~~assistance from the ombudsperson shall be immediately~~
4 ~~delivered, unopened, to the person.~~

5 ~~SEC. 2. Notwithstanding Section 17610 of the~~
6 ~~Government Code, if the Commission on State Mandates~~
7 ~~determines that this act contains costs mandated by the~~
8 ~~state, reimbursement to local agencies and school~~
9 ~~districts for those costs shall be made pursuant to Part 7~~
10 ~~(commencing with Section 17500) of Division 4 of Title~~
11 ~~2 of the Government Code. If the statewide cost of the~~
12 ~~claim for reimbursement does not exceed one million~~
13 ~~dollars (\$1,000,000), reimbursement shall be made from~~
14 ~~the State Mandates Claims Fund.~~

